80-1387

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ALEXANDER L. STEVAS,
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IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1981

No: _____

FREDRIC TANN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Fredric Tann respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on November 24, 1980.

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit reported under Civil Case No: 79-7619, appears in the Appendix hereto. The opinions of the Board of Immigration Appeals in Washington and the Immigration Judge of the Honolulu Immigration Service, appears in the Appendix hereto.

JURISDICTION

The judgement of the Court of Appeals for the Ninth Circuit was entered on November 24, 1980. This petition for certiorari was filed within 90 days of that date. This court jurisdiction is invoked under 28 U.S. C. S1254(1).

QUESTIONS PRESENTED

1. Whether the Ninth Circuit Court of Appeals erred in upholding charges that Petitioner entered the United States without inspection and that proof was sufficiently clear, unequivocal, and convincing

and thus denying his adjustment of status to that of a permanent resident.

2. Whether the Ninth Circuit of Appeals had violated Petitioner's Constitutional rights under the fifth amendment in refusing to suppress statements made by Petitioner to U.S. Immigration Service in December 5, 1977.

3. Whether the changes in Judges in Petitioner's deportation proceedings had violated his constitutional rights.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Whether the Immigration Judge erred in finding Petitioner deportable because a deportable alien is an alien who was admitted to the United States and, whereas, the Ninth Circuit Court of Appeals upheld the Immigration Judge's order charging Petitioner had entered the United States without inspection and, was never excluded from the United States.

STATEMENT OF THE CASE

Petitioner is a 26 years old resident of Hawaii and married to an United States citizen. He drove into the United States in a car at Blaine, Washington on April 24, 1977 and was inspected at the border.

Petitioner had an approved petition and was denied adjustment of status to that of a lawful permanent resident because of alleged entry without inspection charge which is based on unsubstantiated evidence and facts reconstructed from the testimony of Petitioner.

REASONS FOR GRANTING THE WRIT

The Immigration Act of 1952 is said to list some 700 grounds for deportation (Hearings before the Senate Appropriation Committee in the Department of Justice Appropriations for 1954, 83rd Congress, 1st Session, 250(1953), which are set forth in Section 241 (8 U.S.C. 1251(1976).

Originally, deportation was merely delayed exclusion (Aliens who entered in violation of law were made subject to deportation for one year after arrival in 1891 (Act of March 3, 1891, ch 551, S1, 26 Stat. 1804).

Not until 1907 were aliens subjected to deportation for causes occurring subsequent to entry. (Act of February 20, 1907, chapter 1134 S2, 34, Stat. 898).

Under the deportation provisions of the present statute, the grounds of deportation for causes subsequent to entry outnumber those enumerated at the time of entry.

JURISDICTIONAL PREREQUISITES

Only aliens may be subjected to deportation. The burden of proving alienage and deportability by clear, convincing, and equivocal evidence rests with the Government. Woody v. Immigration & Nat. Serv., 385 U.S. 276 (1966); United States ex rel.

Bilokumsky v. Tod, 263 U.S. 149 (1923); United States ex rel. Leong v. O'Rourke, 125 F. Supp 769(W.D.Mo. 1954): United States ex rel. Rongetti v. neely, 207 F. 2d 281 (7th Cir. 1953); United States ex rel. Barilla v. Uhl, 27.F. Supp 746(S.D.N.Y. 1939), aff'd, 108 F.2d 1021 (1940).

Deportation is generally predicated upon the fact that an entry into the United States has been made by the alien. Barber v. Gonzales, 347 U.S. 637(1954); Delgadillo v. Carmichael, 332 U.S. 3881 Savoretti v. United States ex rel. Pincus, 214 F. 2d 314(5th Cir. 1954).

An alien paroled into the United States has not made an entry and is therefore subject to exclusion but not to deportation proceedings. (In re E—, 3 I&N. Dec 541(1949) 8 USC 1182(d)(5)(1970).

Since the Immigration Judge found Petitioner deportable for entry without inspection, the Immigration Judge and Ninth Circuit

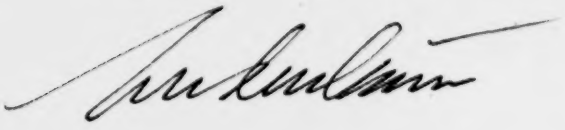
erred in their decision to find alien deportable for entry without inspection because only aliens admitted to the United States are deportable. The law makes a distinction between deportable and excludable aliens. Petitioner was never excluded or paroled into the United States.

The decision of the Immigration Judge upheld by the Ninth Circuit violates due process in that the decision to deport alien is erroneous and that there are no grounds for charging Petitioner with entry without inspection.

CONCLUSION

For the reasons aforesaid, it is respectfully prayed that a writ of certiorari be granted to review the judgement of the Immigration Judge and upheld by the Ninth Circuit Court of Appeals.

Respectfully submitted,



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APPENDIX A

ORAL DECISION OF THE IMMIGRATION JUDGE

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES IMMIGRATION COURT

File: A22-476-593

HANG HOON TAN
aka FREDRIC TANN-BEZOLD,

*Respondent,

vs.

UNITED STATES IMMIGRATION
AND NATURALIZATION SERVICE,

Petitioner,

ORAL DECISION

It is ordered that Respondent's application for adjustment of status under Section 245 be and the same is hereby denied.

*Respondent is also known as Fredric Tann

APPENDIX B

DECISION OF THE BOARD OF IMMIGRATION APPEALS
UNITED STATES DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

File: A22-476-593

HANG HOON TAN
aka FREDRIC TANN-BEZOLD,

*Petitioner,

vs.

UNITED STATES IMMIGRATION
AND NATURALIZATION SERVICE,

Respondent,

DECISION

In a decision dated October 13, 1978, the Immigration Judge found the Respondent deportable under Section 241(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(2), as an alien who entered the United States without inspection. The appeal is dismissed.

*Petitioner is also known as Fredric Tann

APPENDIX C

OPINION OF THE NINTH CIRCUIT COURT OF APPEALS

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No: 79-7619

HANG HOON TAN
aka FREDRIC TANN-BEZOLD,

*Petitioner,

vs.

UNITED STATES IMMIGRATION
AND NATURALIZATION SERVICE,

Respondent,

OPINION

Fredric Tann-Bezold appeals a decision by the Board of Immigration Appeals affirming an Immigration Judge's finding of deportability and ineligibility for adjustment of status. We affirm.

*Petitioner is also known as Fredric Tann